THE HONOURABLE SHRI JUSTICE C.Y. SOMAYAJULU

WRIT PETITION NO.12912 OF 2004

AUGUST 3, 2005

Between:

Kattamuri Savithri w/o late Ramachander Rao

Aged 52 years, r/o Yelamanchili, Visakhapatnam

District and another.

…Petitioners

And

District Collector, Visakhapatnam Distrct,

Visahkhapatnam and others.

…Respondents.

ORAL ORDER:

Alleging that she had after obtaining permission from the Gram Panchayat constructed a go-down in 0.51 cents of land in Survey No.54/6 of Yelamanchili town and has been paying house tax to the Gram Panchayat in respect of the said go-down and non-agricultural tax to the Government in respect of his vacant land, petitioner filed this petition alleging that without giving a reply to her application for assignment of the land the Mandal Revenue Officer (third respondent) is high-handedly trying to evict her from the land. It is also pleaded that petitioner perfected her title to the land by adverse possession.

2 . Third respondent filed his counter affidavit on behalf of the respondents contending that land in Survey No.54/6 admeasuring 0.51 cents of Yelamanchili town is classified as 'Gayyalu' and since petitioner encroached 0.02 cents in that Survey Number he served a notice u/s 7 of the Land Encroachment Act on her on 14.4.2003 and was evicted on 30.4.2003 and as she is not eligible for assignment of the land her request for assignment was not considered.

3. The contentions of the petitioner that she perfected her title of the land in her possession by adverse possession cannot be accepted because even according to her own affidavit she made a request to the Government to assign the land to her. So it is clear that petitioner is admitting the title of the Government to the land in her possession. In such a case the question of her perfecting title to the land by adverse possession does not arise. The fact that the Gram Panchayat has given permission to the petitioner to construct a house also would not make any difference because Gram Panchayat would not go into the title while grant permission to construct.

4. The record produced by the learned Government Pleader shows that notices under Sections 7 and 6 of the Land Encroachment Act were affixed to the door of the structure in the encroached area on 14.4.2003 and 30.4.2003 respectively. In view thereof the allegation in the counter affidavit of the third respondent that petitioner was evicted from the encroached area and that he took possession of the land on 30.4.2003 is not and cannot be true, because in Section 6 notice petitioner was asked to deliver possession of the property within 15 days from the date of service of that notice. When notice was affixed on 30.4.2003, question of taking possession

even on that when she was given time for 15 days there from cannot be true. Hence, I feel it relevant to mention that notices under Sections 6 and 7 of the Act have to be served in the manner prescribed in Section 25 of the Andhra Pradesh Revenue Recovery Act, 1864, or in such other manner as the State Government by rules or order u/s 8 may direct. Since A.P. Land Encroachment Rules do not prescribe the mode of service of notices, procedure prescribed by Section 25 of the Revenue Recovery Act will have to be followed for service of notices under the Land Encroachment Act. As per Section 25 of the A.P. Revenue Recovery Act notices have to be served by delivering a copy on the defaulter or on an adult male member of his family at his usual place of abode, or to his authorized agent, or by affixing a copy thereof on some conspicuous part of his last known residence, or on some conspicuous part of the land about to be attached. So the intention of the legislature seem to be that the other modes of service can be resorted to when the earlier prescribed modes of service are not possible. So it is clear that first an attempt of personal service should be made and if there is evasion, service can be made on an adult male member in the family or the authorized agent of the person concerned and if it also is not possible the notice should be affixed at his usual place of abode and if that also is not possible the last mode of affixing a copy on some conspicuous part of the land about to be attached has to be resorted to.

5. The documents produced by the learned Government Pleader show that notice under Section 7 dated 14.4.2003 was affixed to the structure on the encroached area in the presence of a witness by name Suri Babu, who signed at No.2 under the writing (witnesses to the affixture) No.1 is blank. Significantly the endorsement relating to affixture is in one ink and the signature of the person who seem to have made the affixture is in another ink. Why Suri Babu signed at '2', keeping '1' under the writing is not known. If D. Suri Babu is the only person available there, his signature also could have been taken. Assuming that the figures 1 and 2 were put with an intention to obtain the signatures of two persons why D. Suri Babu was made to sign at '2' but not '1'. A careful look at the notice under Section 7 and the endorsement on the reverse show that they are in the same ink. But surprisingly the signature under the endorsement on the reverse of the notice under Section 7 is in a different ink. In the above circumstances, the genuineness of the notices under Sections 7 and 6 of the Land Encroachment Act relied on by the respondents is doubtful and so the contention of the respondents that delivery of the property was taken over on 30.4.2003 cannot be accepted or believed.

6. Since petitioner is an encroacher, and since respondents contend that the site in occupation of the petitioner is required for the construction of Government buildings and since an encroacher can be evicted by taking recourse to due process of law, now that petitioner is aware of the notice of Section 7 of the A.P. Encroachment Act, this petition is disposed of with a direction to the petitioner to file her reply to Section 7 notice within a period of 30 days from today. If and when the petitioner files a reply the same shall be considered and appropriate orders, as per law may be passed.

7. The petition is disposed of accordingly. No order as to costs.

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Dt.03.08.2005. C.Y. SOMAYAJULU

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